

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE	)	
	)	
v.	)	
	)	I.D. No. 1305003298
	)	
KEITH MARTIN,	)	
	)	
Defendant.	)	

**ORDER**

Submitted: January 20, 2023

Decided: April 12, 2023

**AND NOW TO WIT**, this 12<sup>th</sup> day of April 2023, upon consideration of Keith Martin (“Defendant”)’s Motion for Modification of Sentence under Superior Court Criminal Rule 35, the sentence imposed upon the Defendant, and the record in this case, it appears to the Court that:

1. On May 6, 2014, Defendant pled guilty to Assault Second Degree and Act of Intimidation.<sup>1</sup> On June 26, 2014, the State filed a Motion to Declare Defendant a Habitual Offender.<sup>2</sup> On August 1, 2015, Defendant was sentenced: (1) for the charge of Assault Second Degree, as a habitual offender to a total of twelve years at Level V; and (2) for the charge of Act of Intimidation, to five years at Level V, suspended for 6 months at Level IV DOC Discretion,

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<sup>1</sup> D.I. 30.

<sup>2</sup> D.I. 31.

followed by one year at Level III.<sup>3</sup>

2. On June 17, 2022, Defendant filed a Rule 35 Motion asking the Court to modify his Level IV to Level III probation.<sup>4</sup> The Court denied that Motion.<sup>5</sup>

3. On January 12, 2023, Defendant again filed a letter asking this Court to modify his Level IV to Level III probation.<sup>6</sup>

4. Although Defendant does not cite to Superior Court Criminal Rule 35(b) in his letter, the Court considers his modification request under Superior Court Criminal Rule 35(b).<sup>7</sup>

5. Under Rule 35(b), the Court may reduce the “term or conditions of partial confinement or probation, at any time.”<sup>8</sup> But, “[t]he court will *not* consider *repetitive* requests for reduction of sentence.”<sup>9</sup> A motion is considered repetitive when it “is preceded by an earlier Rule 35(b) motion, even if the subsequent motion raises new arguments.”<sup>10</sup> The repetitive motion bar applies to the request for reduction or modification of a term of partial confinement or

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<sup>3</sup> D.I. 51.

<sup>4</sup> D.I. 56.

<sup>5</sup> D.I. 57.

<sup>6</sup> D.I. 58 (asking “[c]an you suspend the 6 months L[evel] 4 and add it to the 1 year L[evel] 3?”).

<sup>7</sup> *Jones v. State*, 825 A.2d 238, 2003 WL 21210348, at \*1 (Del. May 22, 2003) (Table) (“There is no separate procedure, other than that which is provided under Superior Court Criminal Rule 35, to reduce or modify a sentence.”).

<sup>8</sup> Del. Super. Ct. Crim. R. 35(b).

<sup>9</sup> *Id.* (emphasis added).

<sup>10</sup> *State v. Culp*, 152 A.3d 141, 144 (Del. 2016).

probation.<sup>11</sup> Defendant's request is barred as repetitive. Rule 35 does not allow the Court to use its discretion to ignore this bar.<sup>12</sup>

**IT IS SO ORDERED** that the Motion for Modification of Sentence is **SUMMARILY DISMISSED**.

/s/ Vivian L. Medinilla  
Vivian L. Medinilla  
Judge

oc: Prothonotary  
cc: Defendant  
Department of Justice  
Investigative Services Office

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<sup>11</sup> See *Teat v. State*, 31 A.3d 77, 2011 WL 4839042, at \*1 (Del. 2011) (Table); *State v. Weidlow*, 2015 WL 1142583, at \*1–2 (Del. Super. Ct. Mar. 11, 2015).

<sup>12</sup> *Culp*, 152 A.3d at 145 (reversing the Superior Court's decision to grant the defendant's motion for modification where the motion was repetitive and untimely).